

1 MINUTES

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3 The State Board of Elections board meeting was held on Monday, November 20,  
4 2017. The meeting was held in the East Reading Room in the Patrick Henry Building in  
5 Richmond, Virginia.

6 In attendance, representing the State Board of Elections (the Board) were James  
7 Alcorn, Chairman; Clara Belle Wheeler, Vice-Chair; and Singleton McAllister, Secretary.  
8 Also in attendance, representing the Department of Elections (ELECT) was Edgardo  
9 Cortés, Commissioner, and Anna Birkenheier, Assistant Attorney General. Chairman  
10 Alcorn called the meeting to order at 9:53 AM.

11 The purpose of this meeting was to certify the November General Election. ELECT  
12 staff was asked to prepare a presentation to explain the certification process and to ensure  
13 the results presented before the Board were accurate. Commissioner Cortés informed the  
14 Board that, because there was a short time frame between when local electoral boards (EBs)  
15 certified the elections and when the State Board met, ELECT did not have time to provide  
16 reports to the Board and public before the meeting. The Commissioner advised the  
17 materials would be available online later in the day.

18 Ellen Flory, Elections Administrator/Project Manager at ELECT, reviewed the  
19 steps general registrars (GRs) took during and after the election while local EBs conducted  
20 canvass and provisional ballot meetings to ascertain and certify election results. Upon the  
21 completion of canvass, GRs provided ELECT with abstracts and write-in certifications,  
22 which ELECT staff reviewed for accuracy and completion. Once the results were  
23 confirmed as accurate, ELECT prepared abstracts of votes and certificates of election for  
24 certification by the Board. The races to be certified were Governor, Lieutenant Governor,  
25 Attorney General, all one hundred House of Delegates seats, and the Clerk of Court shared  
26 constitutional office for Lexington City and Rockbridge County. Ms. Flory had all  
27 abstracts available for review if needed.

28 Commissioner Cortés explained that after midnight on election night, ELECT is  
29 required to log any changes made to election night results (ENRs) after midnight. On the  
30 ELECT website, there is a log that tracks these changes and that covers every change made  
31 at a local level for every precinct. The log is available for public viewing on the website,

32 in Microsoft Excel format. Commissioner Cortés shared that ELECT is exploring ways to  
33 make this information more user-friendly, and that next year the website will highlight if  
34 changes were made in a certain precinct. From that log, the Commissioner provided the  
35 Board members with visual data reports that gave information by locality and showed  
36 changes by reason.

37 Chairman Alcorn stated the Board wanted to focus on process improvement and on  
38 how to improve the administration of elections over time. The Chairman noticed on the  
39 visuals the Commissioner provided that some localities had a high number of corrections,  
40 where results were changed after election night; the Chairman also noticed there were many  
41 localities who did not need to do any changes. Chairman Alcorn suggested sending a note  
42 of congratulations to those localities, as entering results accurately and quickly gives  
43 confidence in the results and election process. The Chairman also noted that results were  
44 being entered over several days, but that by the third day, 80% of the results had been  
45 entered. The Chairman said common reasons for later reporting includes incorrect or  
46 incomplete reports from precincts, but asked what lessons could be learned and what  
47 processes could be changed to improve the rate of reporting. The Chairman asked if the  
48 rate of incorrect or incomplete results has gone up or down in comparison to previous  
49 elections.

50 Secretary McAllister noted, looking at the visuals provided, that some of the  
51 percentages were significant. The Secretary asked if the percentages provided could be  
52 broken down further in the future to pinpoint where problems arise. Vice Chair Wheeler  
53 recounted her history working in the precincts as precinct chairman, and said she could  
54 fully appreciate how tired everyone is at the end of election day. The Vice Chair said,  
55 however, to first ensure the statement of results are correct before reporting them. Part of  
56 the Board's mission has been to educate the elections community on procedures regarding  
57 election day. The Vice Chair stated part of the problem surrounding inaccurate statements  
58 of results is that some officers of election are not properly educated on how to fill out  
59 statements of results.

60 Commissioner Cortés said officers of election, GRs, and EBs did an amazing job  
61 administering the election. The Commissioner noted the concern regarding new voting  
62 equipment acquired after the decertification of direct-recording electronic voting machines

(DREs) in September 2017, but stated all of the localities had a successful transition of equipment. The Commissioner addressed some issues that occurred on election day with the electronic pollbooks (EPBs), saying some of the issues reported had to do with a patch that an EPB vendor sent out without alerting localities or ELECT. The patch did not go through proper testing or certification, which created connectivity issues between pollbooks in precincts. The election was conducted regardless, but ELECT would be talking with the vendor to find an appropriate response for fielding issues like this. Commissioner Cortés said this is why there are certification programs and testing that occur before the EPB is used during an election. ELECT would continue to gather facts on the issue for the Board. The Commissioner stated the vendor will at minimum need to have the patch go through certification testing, and then they will see what other steps may be necessary.

Chairman Alcorn agreed with the Commissioner on the necessity of the certification standard, noting that Virginia is one of the first states in the country to do so. The Chairman asked if the new EPB standards were clear enough for vendors, and asked if they need to be made more clear or if other education needed to be done to prevent a similar situation from happening again. Commissioner Cortés said there is some room in the EPB standards to field the patch the vendor put in place without going through the full testing process, but even then, the vendor would require Board approval. ELECT will continually look at the certification process and find ways to strengthen it, especially in regards to security and the availability of EPBs on election day.

Vice Chair Wheeler also heard the reports, stating 8 localities had EPB connectivity issues because of the unapproved patch. The Vice Chair said some reports said turning the EPB off and back on fixed the issue. Commissioner Cortés said that turning it off and on again did not always work, and that the vendor was non-communicative on election day. The Commissioner noted the list of 8 localities was a list provided by the vendor, and so is neither a definitive list of how many localities had the uncertified patch nor a list of how many localities had issues; the Commissioner did state that ELECT is gathering this information.

Vice Chair Wheeler thanked the vendors who helped GRs, EBs, and officers of election get new equipment after the decertification of DREs; the Vice Chair said the

vendors were helpful in picking up old equipment, providing new equipment, and providing training. Secretary McAllister asked if ELECT met with the vendors on Thursday. Commissioner Cortés said ELECT did not, but the vendor who sent out the patch asked what was needed to do testing and recertification. The Secretary asked if ELECT could provide a number of how many localities were affected. Commissioner Cortés stated that the Voter Registrar’s Association of Virginia (VRAV)’s technology committee sent out a survey to GRs about EPB problems. The Commissioner said ELECT would send out a communication to the field, but recommended if a software or system is not approved, localities should not use it.

Chairman Alcorn asked if there was a public list of models and software that are certified. Commissioner Cortés stated there is a list of version numbers that are approved, but not all software versions are on the list. The Commissioner noted this used to be a problem with DREs, but since EPBs are newer technology, there are problems like this that arise occasionally. Chairman Alcorn added that none of these problems have been malicious, but rather just vendors pushing out updates to the software.

Commissioner Cortés then addressed a number of letters and inquiries the Board received regarding the House of Delegates 28<sup>th</sup> and 88<sup>th</sup> district races. The Commissioner provided a hard copy of all of the letters sent up to and including the morning of the meeting, and noted there were no questions related to the statewide certification of the other 98 House of Delegates districts or the shared constitutional office the Board is responsible for.

Chairman Alcorn said the results were clear in the majority of the races, and that those should be certified before the Board then addressed the questions regarding the 28<sup>th</sup> and 88<sup>th</sup> districts. The Chairman said that the Board would sign all of the paperwork regarding certification after the meeting after the Board moved to certify the races.

Vice Chair Wheeler said she had no objections to certifying and then having a discussion, but believed the Board should certify all of the elections that took place, including the elections in the 28<sup>th</sup> and 88<sup>th</sup> House of Delegates districts. The Vice Chair believed the Board did not have the authority to not accept ballots or decisions that came from the local EBs. The Chairman said they would have that discussion once they certified the other 98 districts and one shared constitutional office. Chairman Alcorn then *moved*

125 *that the State Board of Elections certify the three statewide races, Governor, Lieutenant*  
126 *Governor, Attorney General, the Clerk of Court for Lexington City and Rockbridge County,*  
127 *and all of the House of Delegates races, with the exception of districts 28 and 88.* Secretary  
128 McAllister seconded the motion, and the motion passed unanimously.

129 Chairman Alcorn addressed the letters the Board received from law firms regarding  
130 the 28<sup>th</sup> and 88<sup>th</sup> districts. §24.2-679 states that the Board is to meet on the 3<sup>rd</sup> Monday  
131 after the election, and can adjourn day by day for up to 3 days if there are any questions  
132 regarding the results. The Chairman stated he would delay certification since they were  
133 just informed this morning that there will be litigation regarding the total vote count in the  
134 districts; since the Board cannot ascertain the results for the 28<sup>th</sup> and 88<sup>th</sup> districts, it should  
135 delay certification until the results of the litigation are heard. The Secretary agreed.

136 Vice Chair Wheeler said there has to be a discussion first. The Vice Chair stated  
137 that local EBs voted, people in the districts voted, and the GRs submitted the data that  
138 culminated in the results before the Board. The Vice Chair did not believe the Board had  
139 the prerogative to delay the certification, as everyone on the local level did what they were  
140 required to do.

141 The Chairman stated the Board has the right to delay certification for up to three  
142 days. The Chairman addressed the voters that were assigned to the incorrect house  
143 districts. Vice Chair Wheeler said that those house district lines were not changed for the  
144 November election, so those same districts were used for the last House of Delegates  
145 election. Chairman Alcorn agreed that they were the same house district lines, but pointed  
146 out that that doesn't mean voters were assigned to the correct house district. The Chairman  
147 stated because litigation was filed this morning, or would be filed shortly, that the Board  
148 should give the courts a chance to have the discussion regarding the issue and possibly  
149 make a ruling on it during the three days allowed by Code before the Board certifies.

150 Commissioner Cortés said that on election day ELECT received a call from a City  
151 of Fredericksburg EB related to a voter complaint that an individual went to their polling  
152 place and got a ballot for the 88<sup>th</sup> district, though the voter believed they were supposed to  
153 be voting in the 28<sup>th</sup> district. The locality looked at the issue, contacted ELECT, and was  
154 advised to discuss the issue with local counsel. Counsel directed them to continue with the  
155 election, as it had already begun. Over the next couple of days, the locality went through

and identified an issue with some voters that were improperly assigned. There were certain voters who should have been assigned to the 28<sup>th</sup> district, but were incorrectly assigned to the 88<sup>th</sup> district. The Commissioner directed the Board to a visualization provided to them.

Commissioner Cortés reported that there were changes were made in late April of 2016. The changes occurred on a segment on Charles Street in Fredericksburg, and that on April 29, 2016, there were some changes made to this segment in fairly rapid succession. The last of these changes inappropriately assigned voters from the 28<sup>th</sup> district, where they were supposed to be assigned, to the 88<sup>th</sup> district. Vice Chair Wheeler asked for clarification—someone in Fredericksburg, presumably the GR, made changes to the lines most recently on April 29, 2016. The Commissioner clarified the changes were not to the district lines, but to the voters and where the voters were associated. The Vice Chair asked why.

Commissioner Cortés said there was discussion around November of 2016 where some issues were identified with precinct boundaries and where they were assigned in the City of Fredericksburg. The locality began to get questions from a former candidate in the 28<sup>th</sup> district, asking for information related to how the locality made precinct assignments. The changes referred to appeared to have been made shortly after that request. Commissioner Cortés stated that ELECT was not contacted by the former GR about this and that it is up to the GRs to ensure voters are appropriately assigned. It is not clear why the former GR made the changes, and the last change made did mis-assign voters to the 88<sup>th</sup> district rather than the 28<sup>th</sup> district. The Commissioner said there were 83 voters in the affected area.

Vice Chair Wheeler clarified that there are 83 voters assigned to the wrong house district based on the GIS overlay maps, and that those 83 voters were incorrectly assigned into the 88<sup>th</sup> House district. Commissioner Cortés confirmed that the 83 voters are located within and should be associated with the 28<sup>th</sup> district. The Vice Chair asked if the GIS overlay map that ELECT used to produce materials was available to the former Fredericksburg GR. The former Fredericksburg GR could not be asked, as she passed away. Commissioner Cortés said the maps were available from legislative information services. Fredericksburg's GIS has publicly available district boundary maps, which ELECT used in their analysis. ELECT staff worked over the weekend and found a potential

187 for more mis-assigned voters in the locality, and potentially in Stafford County, and was  
188 working as quickly as possible; however, district assignments happens at a local level,  
189 while ELECT normally just assists localities with large scale changes.

190 ELECT was not clear on the facts around the changes the former GR made. The  
191 current GR in the City of Fredericksburg was also not sure, as the GR was not with the  
192 office last year. ELECT was working to find out why the changes were made with limited  
193 information, but does know that voters were incorrectly assigned. The margin in the race  
194 is a question of 82 votes, and with 83 voters incorrectly assigned, ELECT wanted to make  
195 the Board aware of these issues, and the other potential issues, that may require review to  
196 be sure the results are accurate.

197 Chairman Alcorn agreed the Board should understand the information before  
198 certifying, and stated a court of law may be better suited to make the decision. The  
199 Chairman voiced discomfort at the idea of certifying during this meeting, and said the  
200 Board should utilize the extended timeline provided in the Code of Virginia. Secretary  
201 McAllister agreed, since the race was so close. The Secretary asked what the Board would  
202 do if they certified the races, and the courts found they should not have. Commissioner  
203 Cortés suggested the Board discuss that with counsel, but noted that process-wise the Board  
204 is responsible for ascertaining the results of the election and that there are things in place  
205 that could affect the accuracy of those results.

206 Vice Chair Wheeler noted the number of people in the audience that may want to  
207 address this issue. Chairman Alcorn did not originally plan for public comment, but would  
208 allow public comment regarding this issue. The Chairman corrected a statement made  
209 earlier, which said that the Board had to accept the results as they were reported by the  
210 localities; the Chairman stated the Board has the authority to disagree with localities on the  
211 results, but in previous situations, the outcome of the election was not changed. Vice Chair  
212 Wheeler agreed, and said she misspoke earlier.

213 Missy Brown, one of the affected voters that lives on Charles Street in the City of  
214 Fredericksburg, addressed the Board and said she received a ballot for the 28<sup>th</sup> district but  
215 believes she was supposed to receive one for the 88<sup>th</sup> district, which is the opposite of the  
216 issue the Board had been discussing. Ms. Brown said everyone on her street received

217 ballots for the 28<sup>th</sup> district, but that according to the district lines, should have received  
218 ballots for the 88<sup>th</sup>.

219 John Gerlach also lives on Charles Street on one of the affected blocks, and said  
220 when comparing the VERIS list with the 2010 census list of streets, the VERIS list was  
221 incorrect in assigning districts. Mr. Gerlach believed there were two issues at play. A  
222 number of voters were given ballots for the 88<sup>th</sup> district and according to the VERIS log,  
223 were supposed to receive ballots for the 88<sup>th</sup> district; but looking at the census maps, those  
224 voters were supposed to be assigned to the 28<sup>th</sup> district. Mr. Gerlach said the error was in  
225 the VERIS list, and would like to see the error corrected. The neighborhood began a caucus  
226 that was collecting statements from voters, and found that over 90% of the voters indicated  
227 that they voted on the wrong ballot.

228 Cameron Sasnett, Fairfax County GR, said Fairfax County does not have either  
229 district, but spoke for VRAV and mentioned the process of changing precincts and  
230 notifying voters, especially to precincts that are held by incumbents. Mr. Sasnett said that  
231 a single person cannot be identified or blamed for this problem, and to identify one person,  
232 notably the former Fredericksburg GR who passed away and was in good standing with  
233 VRAV, was not appropriate or conducive to figuring out what happened.

234 Jesse Pherson, a representative from the Virginia State Conference NAACP, voiced  
235 concerns the NAACP has about the election and the election process. Mr. Pherson shared  
236 the NAACP's goals to have a fair and free election, and urged the Board to be cautious on  
237 how they proceed.

238 John Findlay, from the Republican Party of Virginia, pointed out that there were  
239 two failed lawsuits regarding the election, and said it was convenient there was a margin  
240 of 82 votes in the race and there are 82 voters who were mis-assigned to their house  
241 districts. Mr. Findlay stated the Board's delay was an attempt to overturn the results of the  
242 election, have a contest, and have a new election. Chairman Alcorn disagreed with Mr.  
243 Findlay, stating the Board is a nonpartisan Board and assured that the Board would try to  
244 be as nonpartisan and objective as possible while making a decision whether or not to  
245 certify.

246 Brandon Howard, the chairman of the Republican Party of Hopewell, Virginia,  
247 spoke, stating the Board already certified the other 98 House of Delegates races during the



meeting. Mr. Howard asserted that if the voices in those 98 district counted, the voices in the 2 districts under discussion should count as well. Mr. Howard strongly urged the Board to certify.

Vice Chair Wheeler stated that in the past, the Board received a log of when district assignments were modified. The Vice Chair pointed out that there were modifications from 2015-2016 on the log that the Board was not informed about. In 2011, when redistricting was last done and the Vice Chair served on a county board, the county board looked at the district map and saw a split had occurred in the middle of a dorm at the University of Virginia. The county board called legislative services, and legislative services worked to move the district line so people were put in the correct districts. Vice Chair Wheeler stated the City of Fredericksburg GR was going by what district lines are laid out in the Code of Virginia, and that street names in the Code do not necessarily correspond to what the GIS map overlays says. The Vice Chair urged election officials to examine their own map overlays and assure they are being used correctly.

Chairman Alcorn suggested the Board wait until the courts have a chance to look at the case to be sure they are doing due diligence. Chairman Alcorn *moved that the Board adjourn until Wednesday, November 22, 2017*. Secretary McAllister seconded the motion, and the motion passed unanimously. Chairman Alcorn then adjourned the meeting. The meeting was adjourned at approximately 10:57AM. The Board will re-adjourn on Wednesday, November 22, at a time to be determined.

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Secretary

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Chair

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Vice Chair